his Lordship was satisfied that the same evidence that went in support of the 1st charge was, without the aid of the presumption, sufficient to support the other two charges. Accordingly I would allow the appeal against conviction on the 3rd charge and order that it be retried before a different magistrate. The sentence and other orders imposed following this conviction must, therefore, be set aside and the fines, if paid, to be refunded to the appellant.

Appeal against 1st charge dismissed; Appeal against 3rd charge allowed; Retrial ordered.

Solicitor: *Lal Behari Singh.*

PUBLIC PROSECUTOR v. LATCHEMY

[A.Cr.J. (Pawan Ahmad J.) April 15, 1967]

[Seremban — Criminal Appeal Nos. 3 & 9 of 1967]

Criminal Law and Procedure — Bail — Accused woman charged with murder — Exceptional and very special reasons — Criminal Procedure Code (Cap. 6), s. 388(v).

Penal Code s. 302 — Murder — Accused a woman Application for bail.

The exception in section 388(v) of the Criminal Procedure Code (Cap. 6) to grant bail to a woman accused is a discretion which should be exercised sparingly and judiciously depending on the reasons of each particular case.

In this case the respondent was charged with the offence of murder. Upon her application for bail on the ground that she was "a mother of 10 children and the youngest of them is still under breast feed" the learned magistrate granted her application subject to a bail of $2,000 in two sureties.

Held: the reasons put forward in this application fell far short of being exceptional and very special reasons and the application should have been refused.

Case referred to:—

(1) *R.* v. *Ooi Ah Kow* [1952] M.L.J. 95.

CRIMINAL APPEAL.

Abu Talib bin Othman (Deputy Public Prosecutor) for the appellant.

Gurdial Bakan Singh for the respondent.

Pawan Ahmad J.: The respondent in both these cases was a woman charged with the offence of murder punishable under section 302 of the Penal Code and the only punishment for such an offence is death.

When her case came up for mention in the magistrate's court on 28th December, 1966 before the learned president who was sitting as a magistrate, an application for bail was made on her behalf by her counsel and her application was granted subject to a bail of $2,000 in two sureties.

The learned deputy public prosecutor filed an appeal against the said order.

On 3rd February, 1967 when this case came up for mention before another magistrate, an application was made by the learned deputy public prosecutor under section 388 (v) of the Criminal Procedure Code (Cap. 6) to remand the accused in custody. The learned magistrate held the view that he had no power to over-rule the decision of the learned president and therefore decided that the case should be further argued before the president and in the meantime, he extended the bail.

The learned deputy public prosecutor also appealed against the order of this magistrate.

As both these appeals are on the same subject matter, it is convenient to deal with them together. The general rule under section 388(v) of the Criminal Procedure Code is that the court should not grant bail to a person charged with an offence punishable with death. One of the exceptions to this rule is that the court may grant bail to a woman accused. In my view this exception is a discretion which should be exercised sparingly and judiciously depending on the reasons of each particular case. Spenser Wilkinson J. in the case of *R.* v. *Ooi Ah Kow* [1] at page 97 states as follows:—

"Again, following the case of *Re K. S. Menon*, I was of the opinion that in cases punishable with death and in cases punishable with penal servitude for life the High Court ought not to grant bail, except for exceptional and very special reasons."

The criterion by which a magistrate should allow bail in cases of this type, in my view, is only in those cases where he is convinced that the reasons put forward by the applicant are said to be exceptional and very special reasons.

In the present case the only grounds on which this application for bail was granted by the magistrate's court appear to be as follows:—

"The accused is a mother of ten children and youngest of them is still under breast feed."

In my opinion the reasons put forward in this application fall far short of being exceptional and very special reasons and, therefore, the application should have been refused by the magistrate's court.

In the above circumstances, I allow both the appeals by the learned deputy public prosecutor. Bail cancelled, and respondent to be put back on remand.

Appeals allowed. Bail cancelled.